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THE 2016 GUIDE TO EUROPEAN INTERNATIONAL CONTRACTORS

EIC MISSION

EIC is the only industry association representing the interests of internationally active European contractors towards the EU, international organisations, financing institutions and society at large.

EIC advocates fair international competition and balanced contract conditions, guality-based procurement and value-for-money, innovative project delivery schemes and sustainable construction methods.

EIC aims to create new business opportunities for European contractors by promoting a closer collaboration between development and commercial financiers and by promoting Public-Private Partnerships internationally.

EIC provides a unique forum for networking and sharing experiences regarding all matters relating to the international construction business.

A MESSAGE FROM THE PRESIDENT

LADIES AND GENTLEMEN. DEAR COLLEAGUES,

I am pleased to present to you the first edition of the European International Contractors (EIC) Guide. It is designed to provide our Member Federations, member companies as well as our partners and all interested stakeholders with a guick overview about the membership, structure and activities of our federation.

European international contractors started working abroad in the early years of the last century and are today capable to design, build and operate the most complex pieces of civil engineering, marine and building works in all locations across the globe. According to our most recent statistics, European contractors generated in the year 2014 a total international construction turnover of more than € 165 billion at the international level

And there is plenty of future international work. It is estimated that US\$ 57 trillion in infrastructure investment will be required until 2030 simply to keep up with projected global GDP growth. The world's growing population asks for better access to all kinds of infrastructure services and expects ingenious construction solutions to mitigate the risks of global warming. Responding to these needs is our core business as European international contractors.

Yet finding the necessary finance to bridge the infrastructure "gap" remains a huge challenge. EIC therefore appreciates the renewed determination of the global development community - affirmed last year in the "2030 Agenda for Sustainable Development" and in the "Addis Ababa Action Agenda" – to enhance investments in resilient and sustainable infrastructure and to address the constraints for private investment in infrastructure.

As representative of one of Europe's largest industries, EIC is keen to share its expertise and experience with other stakeholders to identify, understand and address the infrastructure challenges and opportunities presented by an everglobalising world.



Philippe Dessoy **EIC** President BESIX



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EIC HISTORY

1998

2000

2003

Finance.

Working Group

The first **EIC**

Contractor's Guide

to the FIDIC suite of contract forms is

EIC moves its **legal seat** from Wiesbaden

1970

EIC precursor International

1977

renamed as European Contractors (EIC).

984

EIC acquires its own legal status as an autonomous association under German law Its founding members are 14 construction federations from 12 European countries

to antide

2005

Working Group Africa und sub-

2011

2012

joins the International Advisory Group on Procurement (IAGP) advising the World Bank on the elaboration of its New Procurement Framework. EIC becomes a

supporter of the

Transparency



two Roundtables with the European Commission on Infrastructure in ACP Countries

EIC speaks at the fourth OECD High-Level Forum on Aid Effectiveness in

Construction Sector Initiative CoST

2013

Since 2013 EIC accepts Associated Membership of construction-related

2015

joint mission to the African Development Bank.

2016

EIC launches its Working Group Corporate Responsibility

EIC PROFILE AND KEY ACHIEVEMENTS

Our members are construction federations from 15 European countries and their internationally active member firms. Since 2013, we also admit Associated Company Members from construction-related sectors. EIC promotes the views and positions of the European construction industry at EU and global level with respect to the political and legal framework conditions affecting the international activities of European contractors.

EIC maintains close relations with all European and international policy-makers, development finance institutions and other important organisations with policies relevant for the international construction business. These include the European Commission, the European Investment Bank, the European Bank for Reconstruction and Development, the OECD, the World Bank as well as other relevant non-governmental organisations, such as FIDIC or the Construction Sector Transparency initiative (CoST).

06

The EIC Secretariat, in collaboration with the Board and the Member Federations, concentrates its lobbying on key priorities. In 2016 these are:

- EIC speaks out for guality-based procurement that takes into account additional evaluation and award criteria other than merely the lowest evaluated price:
- EIC is recognised as an advocate for fair and balanced contract conditions, including guick and efficient dispute settlement mechanisms;
- EIC provides the industry's feedback to the World Bank on the implementation of its New Procurement Framework and to the Multilateral Development Banks (MDB) on the review of their policies on the handling of Abnormally Low Tenders;
- EIC promotes innovative project delivery schemes, such as Design-Build (and Operate) schemes, Early Contractor Involvement and Partnering, as well as innovative financing schemes, such as PPP and Project Finance and Blending of development and commercial finance;
- EIC calls for the opening-up of national construction and public procurement markets world-wide in line with existing GPA commitments and for alignment of the OECD policy standards with those of key trading partners in order to create a level playingfield for European international contractors in the global competition.



- Books):

The following key achievements can be linked with EIC's lobbying activities:

- Wide-spread industry use of the EIC Contractors' Guides to five FIDIC standard forms of contract (the so-called Red, Yellow, Silver, Gold and Pink

Despite strong demands for a transition to Country Procurement Systems, the World Bank maintains for International Competitive Bidding its Standard Bidding Documents also under the New Procurement Framework as default mechanism for Bank operations;

- Multilateral Development Banks have agreed to introduce a new provision dealing with Abnormally Low Tenders into their Procurement Rules;

The European Commission intends to expand its procurement methods in ACP countries to Design-Build (and Operate) schemes and has proposed to amend the EU's regulatory framework to allow for respective works contracts to be awarded on the basis of the most economically advantageous tender as an alternative to the lowest price for construction approach;

Whereas in the past leveraged financing raised by the EU Blending Facilities has been provided first and foremost by public sources, the European Commission now aims at catalysing additional private finance. EIC has elaborated an innovative "Blending 2.0" concept under which EU grants could soften concessional loans of European Development Finance Institutions which in turn could be syndicated amongst commercial banks to the extent that insurance cover from participating

Export Credit Agencies is available;

The EU has introduced a reference to fair and balanced contract conditions in the context of the "Connecting Europe Facility" Regulation.

EIC MEMBER FEDERATIONS

EIC Members are construction industry federations from 15 European countries that are directly or indirectly affiliated to the European Construction Industry Federation (FIEC). Membership can be acquired through an application for membership, admission is decided by the EIC Board.

Those companies that are members of the EIC Member Federations are also part of the EIC network and invited to take part in the Working Groups, General Assemblies and Workshops.





Hauptverband der Deutschen Bauindustrie



GREECE Association Panhellénique des Ingénieurs Diplomés Entrepreneurs de Travaux Publics

R

SWEDEN

Sveriges Byggindustrier



BELGIUM Confédération Construction

BULGARIA Bulgarian Construction Chamber







NETHERLANDS Netherlands Association of International Contractors (NABU)



PORTUGAL Federação Portuguesa da Indústria da Construção e Obras Públicas



SPAIN Asociación de Empresas Constructoras v Concesionarias de Infraestructuras SEOPAN



SWITZERLAND Schweizerischer Baumeisterverband



EIC partners with the European Construction Industry Federation (FIEC) and with the Confederation of International Contractors' Associations (CICA) on all matters of common interest and concern.



08





DENMARK Dansk Byggeri (Danish Construction Association)



EIC STRUCTURE

Member Federations

General Assembly

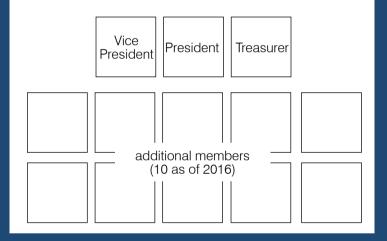
Each Member Federation delegates two contractors to the General Assembly as voting representatives together with one non-voting permanent federation official. Additional contractors may participate without voting privileges.

The General Assembly is called twice per year. Its main tasks are:

- the acceptance/rejection of members,
- the passing of resolutions regarding termination of membership,
- the election of President, Vice President, Treasurer and auditors,
- the nomination of the remaining members of the Board,
- the appointment of the Director,
- the passing of subscription regulations,
- the approval of budgets and annual reports and the determination of subscriptions,
- the formal discharge of the Board and the Director,
- the passing of resolutions regarding changes of articles in the EIC Statutes.

EIC Board

The board is comprised of internationally experienced contractors representing their respective member federation. The EIC Board nominates the heads of the Working Groups.



EIC Secretariat

The EIC Secretariat is led by the Director who is proposed by the Board and appointed by the General Assembly.

Working Groups

- WG Africa
- WG Contract
- Conditions
- WG Corporate Responsibility (CR)
- WG Export Credits
- WG World Bank
- Procurement
- with FIEC: WG Poland

Currently dormant: - WG Finance / PPP

EIC BOARD

Each Member Federation is entitled to nominate an internationally experienced contractor as Member of the EIC Board. The Board determines the policy of EIC within the scope of the principal resolutions adopted by the General Assembly. Each Board Member is elected by the General Assembly for an initial term of two years which may then be extended.



EIC Vice President Wouter Remmelts Managing Director BAM International



EIC President **Philippe Dessoy** General Manager Business Development BESIX



EIC Treasurer **Per Nielsen** Senior Advisor NCC







Juha Kostiainen Senior Vice President, Urban Development & Corporate Relations YIT Corporation





António Mota Chairman of the Board of Directors Mota-Engil









Duccio Astaldi Chairman of the Management Board Società Italiana per Condotte d'Acqua

George Demetriou Advisor to the Board Executive Director (Ret) J&P Avax



Pedro Maristany International Business Development Deputy Director Dragados



Christophe Pélissié du Rausas Executive Vice-President VINCI Concessions VINCI



Jörg Wellmeyer Managing Director Strabag International

ASSOCIATED COMPANY MEMBERS

Associated Company Members participate in the debates shaping the future of the international business. As part of the EIC network they contribute to the private sector's response to all crucial matters. Representatives of associated member companies are invited to learn about the latest market trends in the EIC Business Workshops and to meet key decision-makers from European and International Institutions as well as senior executives from Europe's leading international contractors in the context of the EIC Conferences.







9195

Quantum Global Solutions, Qatar, joined March 2016



Workshop ners – Supply Chai 10.30 Workshop Introductio

09 Oc

ruction Leader at EY 10.40 Sustainable Coalitions

11.05 OECD Due Diligence Guidance for Responsible Supply Chains in the Construction Sector kamp, Chair of the OECD Working Party on Resp

11.30 Coffee Break

12.00 The Partnership Advantage - Reducing Risk through Supply Chain Partnerships in International Mega Projects eunissen, Director Procurement liddle Fast Asia Australia (Oil & Ga

12.25 Long-term Relations between Joint Ver Partners from the Perspective of a Sup Gebhard Lehmann Vice

EIC

12.50 Financing and Investing in Sustainable Infrastructure Projects Patrick Kanters, Managing Director Global Real Estate & Infrastructure, APG Asset

13.15 Lunch

14.15 From Liability to Responsibility? Supply Chain Responsibility from a Legal Angle Mark Job, Partner, Pinsent Masons 14.40 Sustainable Sourcing Joost E. Rijnsdorp, Mana Logistics Royal Boskalis

15.05 Case Study - Building Sustainable Stadiums in the Middle East

teven Wilbrenninck, Produc tadiums, BAM International 15.30 Discussion & Closing Remarks

16.00 End of Workshop

Twice a year, in spring and autumn, representatives of Member Federations and member companies are invited to gather for the EIC General Assemblies which are followed by a Workshop.

These customised Workshops are topic-related and highlight either operational challenges for the international construction business, for instance risk management tools, supply chain responsibilities or new construction technologies, or they examine business opportunities for specific contracting models, such as PPP or Early Contractor Involvement,

At these occasions, additional expertise is brought into the discussion amongst the EIC membership by engaging high-level speakers representing business partners, companies from construction-related sectors and political as well as development finance institutions.



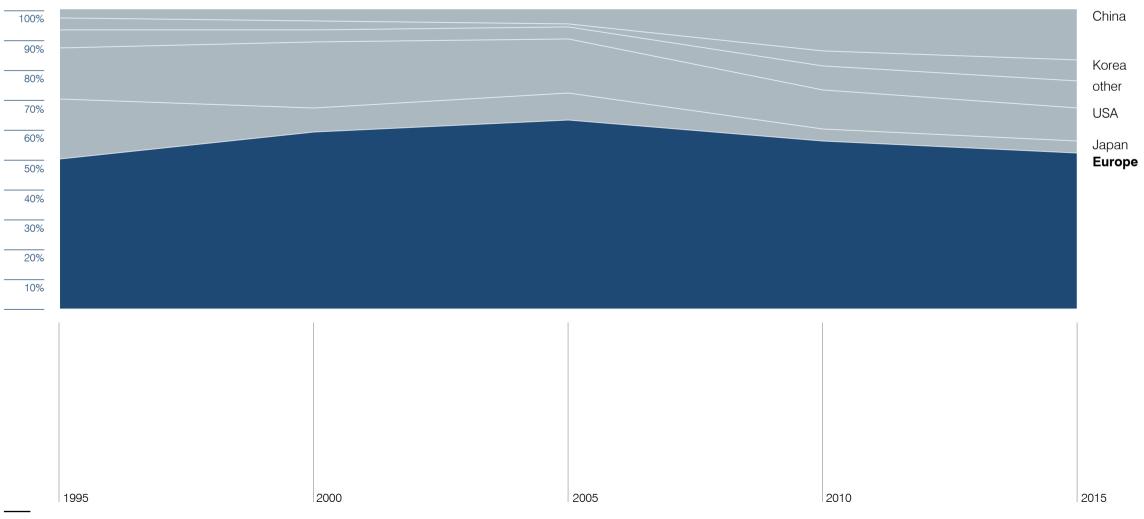
EIC PRESENCE IN INTERNATIONAL MARKETS

The European construction industry remains a major power in the international construction business. Whilst competitors from Asia, in particular from China and Korea, have gained significant market shares over the past two decades, European international contractors, as a group, still account for more than 50% of the revenues of the world's leading international contractors.



The analysis of the latest "Top 250 International Contractors" list, which is annually comprised by the US construction magazine Engineering News-Record (ENR), suggests that more than 50% of international revenues world-wide are generated by European companies, including their Turkish colleagues. In the second place are the internationally active Chinese construction enterprises, mostly state-owned, which accounted for 17% of international revenues worldwide in 2014,

International Market Share





ahead of US international contractors that generated a market share of 11%.

A long-term comparison based on the ENR data indicates that the international activities of the European construction industry peaked in the mid-2000s. Despite growing competition from both regional and local competitors, European contractors have succeeded adapting themselves to an ever-changing business environment.

Source: Engineering News-Record (ENR)

EIC INTERNATIONAL CONTRACTS STATISTICS

EIC publishes an annual International Contracts Statistics in collaboration with its Member Federations. The EIC Statistics, which lists international turnover and new contracts, gives an in-depth view of how the international construction market is developing for European contractors.

The EIC Statistics are to be seen as complementary to the ENR data which is neither concerned about double-counting nor does it exclusively analyse the construction business of the world's leading international contractors. Instead, the ENR list also refers to electrical contractors, steel builders, oil and gas companies etc. and collects total group turnover, including revenues from energy, industrial and other services.

In the year 2014, some 44% of the international turnover of European international contractors came from intra-European business activities, a quarter was contracted by the affiliated companies in North America and Australia, and one third was generated in the emerging and developing markets outside the OECD area.



	Austria	Belgium	Denmark	Finland	France	Germany	UK ²⁾³⁾	Italy	NL	Portugal	Spain	Sweden	Turkey	Total	
Companies reporting	4	4	4	6	8	13	14	2	36	8	20	13	3	42	173
International Total (in million €)	14.112	5.736	539	1.972	34.946	26.726	5.465	10.469	13.204	5.640	15.526	15.329	15.974	165.638	
without Europe	935	4.009	50	3	15.596	23.601	4.017	7.483	4.431	5.154	9.870	5.331	13.025	93.505	
without Europe and North America	834	4.002	50	3	10.909	14.367	3.912	6.939	3.589	5.154	6.540	0	12.886	69.185	
without Europe, North America and Australia	818	2.874	50	3	9.973	1.856	3.6274)	6.782	2.588	5.154	6.265	0	12.873	52.863	

Regional Total (in million €))														
Europe	13.177	1.727	489	1.969	19.350	3.125	1.448	2.986	8.773	486	5.656	9.998	2.949	72.133
North America (USA and Canada)	101	7	0	0	4.687	9.234	105	544	842	0	3.330	5.331	139	24.320
America Central and South)	154	545	0	0	1.234	495	322	3.122	644	1.579	4.121	0	26	12.242
Oceania/Australia	16	1.128	0	0	936	12.511	569	157	1.001	0	275	0	13	26.145
Asia (Without Middle East)	92	399	16	3	3.109	270	_	302	758	0	355	0	4.234	
Africa (Without Middle East)	158	781	20	0	4.277	607	543	2.173	516	3.570	778	0	3.242	16.665
Middle East ¹⁾	414	1.149	14	0	1.353	484	2.478	1.185	670	5	1.011	0	5.371	14.134

1) Afghanistan, Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi-Arabia, Syria, United Arab Emirates and Yemen (North and South)) Source: ENR; The Top 225 International Contractors 2014; published on August 24, 2015. - Currency rate: 1 € = 1,33 US\$; Official rate for 2014 of the European Central Bank

3) EIC's own research

4) As figures for the U.K. cannot be split between Australia and Asia, the figure is an approximate value.
 5) Bulgarian Construction Companies' turnover is not included but amounted to about € 50 Million

EIC STATISTICS ON THE GLOBAL PPP MARKET

EIC constantly reviews the latest developments in the global markets for Public-Private Partnerships (PPP) and Project Finance and publishes its own statistics on the share of EIC member companies in the global PPP market.

The latest update of the EIC Statistics suggests a total global PPP project volume of more than US\$ 1 trillion in the year 2014, of which more than 70% are located within the OECD area.

With a share of 51%, roads are the leading PPP segment, followed by rail (21%), ports and airports (15%) and water (13%). EIC member companies currently operate some 22% of the global PPP project volume, mainly in the road sector.

PPP PROJECTS WORLDWIDE

value in million US\$

	Non OECD		Non OECD		Non OECD		OEC	D	Afric	a	Asia	a	Central/ Amer		Eu	оре	Middle	East	North A	merica	Ocea Austr	•	Grand To	otal
				EIC		EIC	E	EIC		EIC		EIC		EIC		EIC		EIC	I	EIC share				
		share	:	share		share	ę	share		share		share		share		share		share						
Airports	30.651	26%	78.036	25%	1.542	65%	39.127	3%	10.672	24%	41.294	52%	2.625	31%	6.266	11%	7.162	0%	108.687	25%				
Ports	19.425	14%	27.999	27%	500	22%	16.408	8%	6.621	23%	11.892	61%	1.100	0%	2.946	0%	7.956	0%	47.424	21%				
Rails	57.805	10%	158.490	44%	5.568	66%	58.989	3%	16.054	9%	105.401	63%	1.100	14%	21.463	4%	7.720	7%	216.295	35%				
Roads	114.880	19%	408.432	52%	4.998	19%	69.839	3%	91.430	22%	238.735	75%	2.235	0%	92.903	29%	23.171	17%	523.312	45%				
Water	75.595	45%	63.388	50%	10.683	55%	30.526	42%	16.285	30%	31.898	61%	20.640	52%	17.908	28%	11.043	63%	138.983	47%				
Total	298.356	24%	736.345	46%	23.291	50%	214.890	9%	141.062	22%	429.221	68%	27.700	42%	141.485	23%	57.051	20%	1.034.701	40%				



Source: Public Works Financing (PWF), EIC

EIC PRIORITIES

Fair Contract Conditions Unfair Particular Contract Conditions EU Design, Build & Operate Schemes Vorld Bank Procurement Ethics & Corporate Responsibility Blending 2.0 Abnormally Low Tenders

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Fair and balanced contract conditions are beneficial for both contractors and clients. They are essential for a timely and high-quality project delivery as well as for ensuring effective dispute settlement.

Duccio Astaldi

Società Italiana per Condotte d'Acqua EIC Board Member and Past President

FAIR STANDARD FORMS OF CONTRACT FOR CONSTRUCTION

POLICY CONTEXT

On large construction projects, it is expedient and common for international clients and their financiers to base their tenders on a standard form of contract indicating industry best practice. Besides EIC's own standard form of turnkey contract, published in 1994, relevant examples are the FIDIC 1999 suite of contracts, the NEC3 family of contracts, the ENAA Model Form of International Contract for Process Plant Construction or the ICC Model Contracts. In relation to all EU external actions the European Commission has elaborated specific General Contract Conditions for Works Contracts financed by the European Development Fund (EDF) or the European Union.

EIC POSITION

EIC has no preference for any particular standard form of construction contract but rather insists on the use of fair and balanced contract conditions as they are in the best interest of the parties involved and of the project itself. The use of a reputable and equitable standard form of construction contract is a prerequisite for serious contractors to offer their lowest tender price, given that they can eliminate large contingency cost to calculate for potential risks, and it allows for proper teamwork during the execution phase.

To date, the FIDIC-based contracts are the most commonly used standard forms for international construction projects which is why the EIC Working Group "Contract Conditions" traditionally reviews the new and updated FIDIC forms. Compared with the FIDIC standard forms of the last century, the FIDIC 1999 "Rainbow" suite of contracts comprises a rather demanding risk profile for contractors. Therefore EIC, starting with a commentary on the unbalanced "Silver Book" in the year 2000, has meanwhile published five "EIC Contractor's Guides" to **FIDIC contract forms.**

STATUS QUO contractor.

EIC has started its "friendly review" of the update of the FIDIC 1999 "Yellow Book" in October 2015 knowing that FIDIC have announced that the updated "Yellow Book" will not be published separately but together with the other two other major Conditions of Contracts, namely the "Red and Silver Books". As a matter of principle, EIC calls upon FIDIC to abstain from realigning the risk profile, which was increased already with the FIDIC 1999 suite of contracts and subsequent forms, further to the detriment of the

EIC further calls upon FIDIC to continue with its time-honoured tradition that the FIDIC standard forms of contract take the form of a "manual of good engineering practice prepared by engineers for practical use". Given that the FIDIC 1999 "Yellow Book" is widely accepted in the market, EIC recommends that FIDIC concentrates its drafting work on closing existing loopholes and amending those passages that require improvement or correction in line with FIDIC users' experience rather than embarking upon an extensive rewrite of the current edition. It would be a disservice to the industry if well-established procedures and tried and tested conditions were substantially amended to such an extent that will be new to future contracting parties.

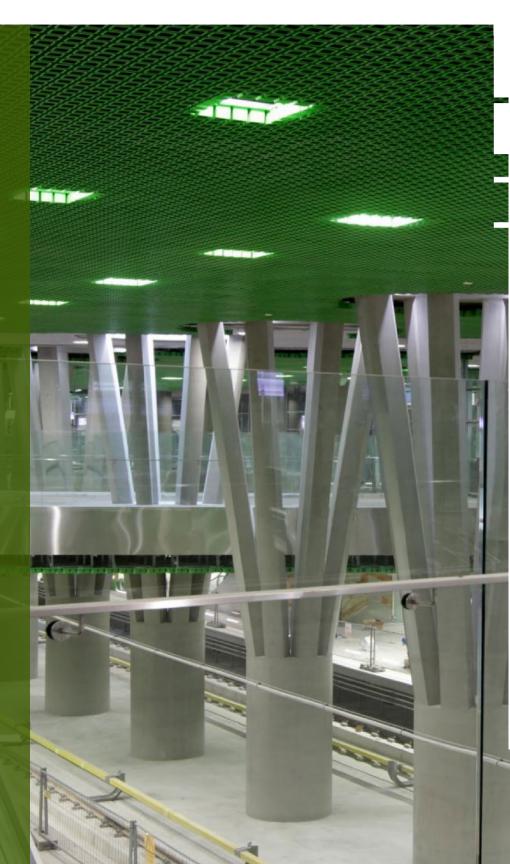
Concerning the planned new FIDIC/ITA standard form of contract for Underground Works, EIC agrees with the current conceptual approach that the employer be obliged to provide a preliminary design that is detailed enough to allow the contractor to prepare a tender design and to calculate a tender price.

EIC requests that the employer be asked to describe the scope of the works by means of measures that the contractor shall undertake to perform the works and that in case that additional measures become necessary, the contract provides for a mechanism to agree on additional cost and time. EIC further recommends that the employer be under an obligation to disclose all available geological and geo-technical information and to make use of a contractually binding geo-technical baseline report.

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Particular Conditions are intended as a means to include specified data and contractual requirements linked to the special circumstances of the project. They should not be used to unfairly allocate the majority of risks to one party or to change the general risk-sharing philosophy of the standard contract.

Mathias Fabich, PORR Member of the EIC Working Group Contract Conditions



UNFAIR PARTICULAR CONTRACT CONDITIONS

POLICY CONTEXT

Whilst any standard form of contract may be modified in consideration of the actual project circumstances, experience shows that the project implementation will suffer if, as a consequence of unfair modifications to the originally contemplated risk distribution, the risks allocated to the contractor become excessively high. Negative knock-on effects such as non-participation of conscientious contractors in tenders, poor construction guality, delays during execution, frequent disputes between the parties and, in extreme cases, eventual termination of the contract are but a few unwelcome consequences.

Whilst the insertion of unfair Particular Contract Conditions is a worldwide phenomenon, this bad habit of employers is particularly irritating in some Central and Eastern European (CEE) countries in the light of the fact that most infrastructure projects in the region are funded by European or international financiers. The FIDIC "Red and Yellow Books" were used correctly in connection with projects funded by the World Bank, the EBRD, the EIB and or the ISPA and PHARE programmes until the accession of the CEE countries to the European Union. But thereafter the EU Commission and the EIB were no longer authorised to scrutinise the tender documents of projects for which they were providing finance. From this date on, employers in most CEE countries started to modify the FIDIC standard forms to the disadvantage of contractors.

EIC POSITION

EIC is highly concerned about the widespread bad habit of public employers, and their advisors, to modify the balanced risk profile of the FIDIC standard forms by means of unfair Particular Contract Conditions. EIC maintains that the sole purpose of Particular Conditions is to complement the standard forms with specified data and contractual requirements linked to the special circumstances of the country, the employer, the engineer, the sector, and the project.

STATUS QUO

They may not be misused to modify the risk allocation of the standard forms of contract.

EIC constantly reminds public employers around the world and specifically in the CEE region to abstain from inserting unfair Particular Contract Conditions which undermine the risk-sharing philosophy of the FIDIC standard forms and supports in principle the idea to develop so-called "Golden Clauses" which cannot be amended by the client if it wishes to advertise that a project is based on an FIDIC form.

In February 2015, EIC submitted constructive suggestions to FIDIC and to the Romanian construction federation as to how the standardised draft Particular Contract Conditions in relation of the FIDIC 1999 "Red and Yellow Books", as proposed by the Romanian Government, should be amended. In November 2015, EIC presented its critical position on unfair modifications of the FIDIC contracts forms in a national construction law conference organised by the Chamber of Commerce and Industry of Slovenia.

In March 2016, EIC prepared a position on the use of (un)fair contract conditions for projects financed by the Connecting Europe Facility (CEF)", which includes a synopsis of unfair contract conditions found in a specific road construction tender in Poland, and which was submitted jointly with FIEC to the Cabinet of the EU Transport Commissioner.

EIC is confident that the evidence presented could create a precedent for an intervention of the EU Commission in a Polish road construction tender bearing in mind that the CEF Regulation stipulates in Recital 65 that the contract conditions for CEF-financed projects should be drafted in such a way as to fairly allocate the risks associated with the contract, in order to maximise cost-effectiveness and enable the contract to be performed with the optimum efficiency. This principle should apply irrespective of whether a national or international contract model is used.

Maintaining infrastructure in Africa is a huge challenge for clients, governments and financiers. EIC fully sup-ports the European Commission's strategy to incorporate innovative project delivery methods into the contracting procedures applying to EU external actions. We belie-ve this will lead to a more efficient project management, greater sustainability and better value-for money for all parties involved in infrastructure delivery.

Hervé Ronot

Sogea Satom Chairman of the Working Group Africa

EU DESIGN-BUILD AND OPERATE SCHEMES

POLICY CONTEXT

The traditional method of implementing infrastructure projects financed by the European Commission under the external action rules is for a Contracting Authority to appoint a consultant for carrying out the detailed design of the project and preparing the bidding documents and to subsequently launch a works tender. The Practical Guide to contract procedures for European Union external action (PRAG) stipulates that the tenders must be placed in a single sealed envelope and that the contract shall be awarded to the tenderer submitting the lowest price classified as "technically compliant" during the technical evaluation. The European Commission is currently studying the option to expand the procurement options under the PRAG to Design-Build and Operate (DBO) schemes in order to maximise the impact and value added of EC funds earmarked for EU external actions.

EIC POSITION

EIC highlighted already with the publication of its "EIC Blue Book on Sustainable Procurement" in November 2004 that the traditional designbid-build method may be a reliable form of procurement but it does not provide an opportunity to integrate the know-how of contractors in the design stage although early involvement of such expertise can significantly contribute to the efficiency of the process. Neither provides the traditional method a mechanism to draw on the private sector's capabilities to maintain and operate infrastructure facilities.

Accordingly, EIC supports a paradigm shift towards DBO schemes, which could lead to more efficient project management and deliver more value-for-money for the EU itself, its partner countries and the companies involved in infrastructure delivery. EIC recommends to award the project on the basis of the "economically most advantageous tender" to be established by using a "two-envelope system" which guarantees that the technical proposals are evaluated first with the effect that the technical solutions that are most attractive to the Contracting Authority can be selected without any bias from the knowledge of the price of that solution.

STATUS QUO

works contracts.

A study commissioned by the European Commission's Directorate-General for International cooperation and Development (DG DEVCO) has established significant advantages of Design-Build and Operate contracts, when compared to conventional designbid-build approach, for instance concerning the delivery of more sustainable long-term assets, the enhancement of quality and efficiency of end-user services, technology transfer to the developing country, better risk control and best value-for-money procurement.

EIC's Working Group Africa submitted its comments at various stages of the EU study and the EU Commission concurs with EIC's call for a balanced risk allocation also under Design-Build and Operate schemes. In particular, the Commission has assured EIC that it does not intend to deviate from the conventional risk allocation as laid down in the present version of the General Conditions for Works Contracts financed by the EDF. The European Commission is presently preparing two pilot projects in Africa to be tendered with bespoke amendments of the existing General Conditions for re-measurable

In addition, the Commission has submitted a legislative proposal to the European Parliament and the Council for an amendment of the Financial Regulation and its Rules of Application to allow for EU-financed external action works contracts to identify the most economically advantageous tender also on the basis of the best price-quality ratio. This amendment would allow the European Commission to apply two different options for awarding Design-Build and Operate contracts: either an award based on the lowest evaluated price for construction, taking into consideration the potential operational cost for a certain period of time, or a multi-criteria approach under which other aspects than price, e.g. quality, transfer of technology, social and environmental sustainability, etc. would also be assessed.

BLENDING 2.0

POLICY CONTEXT

In the "Agenda for Change of EU Development Policy" the European Commission announced its plan to develop new ways of engaging with the private sector in order to deliver public goods. The EU expressed its readiness to explore up-front grant funding and risk-sharing mechanisms to catalyse public-private partnerships (PPP) and private investment.

At the same time, the EU announced to only invest in infrastructure where the private sector is unable to do so on commercial terms. By end-2014 over \notin 2 billion of EU grants leveraged almost \notin 20 billion of loans by finance institutions and regional development banks and lead to investments in EU partner countries of more than \notin 44 billion. In view of the so-called "Post-2015 Sustainable Development Goals" the EU announced to invest up to \notin 8 billion as a key contribution, with the aim of generating more than \notin 40 billion from public finance institutions which should help mobilise over \notin 100 billion overall by 2020.

EIC POSITION

EIC welcomes the EU development policy which aims at leveraging private sector capital and expertise for infrastructure investments in developing countries. In Africa, however, the potential to develop PPP and private investments in the infrastructure sector is presently limited. Therefore, EIC has elaborated an innovative proposal that expands the conventional EU Blending option.

EIC's concept "Blending 2.0" suggests that eligible development finance institutions syndicate a certain tranche of the loan amongst commercial banks to the extent that such funds can be guaranteed by comprehensive insurance cover from export credit agencies (ECAs). This model could catalyse additional private sector finance for typical public sector infrastructure projects that do not generate sufficient direct project income but are critical for the social and economic development of the country.

STATUS QUO

On EIC's initiative the European Commission's DG DEVCO hosted a Roundtable in July 2014 in order to assess the options and obstacles with regard to engaging ECAs more strongly in the EU's Blending activities with the European Development Finance Institutions (DFIs). This event was the first time various units of the European Commission, of the EIB and the EBRD, as well as representatives from several ECAs, from the European Banking Federation and from EIC came together for an expert discussion on a high technical level.

DG DEVCO considers EIC's concept to be generally compatible with the Blending Framework, but refrains from promoting any particular blending variant. DFIs, by contrast, are currently sceptical towards Blending 2.0 as they have a vested interest to continue with current blending practices, given that they are the main beneficiaries of EU grants. In October 2015, EIC presented its proposal for a "Blending 2.0" concept at a meeting of the Technical Group on Private Sector Participation of the EU Platform for Blending in External Cooperation (EUBEC) in Brussels.

The EIC proposition was supported by the European export credit agencies from Belgium (Delcredere/ Ducroire) and from Denmark (EKF) who emphasised that a closer collaboration between DFIs and ECAs could lead to additional capital from ECAs and commercial banks, longer tenors and improved pricing of premiums. The European Banking Federation (EBF) added that the EIC concept would improve the competitive situation for European exporters, in particular in Africa, where their non-OECD competitors had easier access to subsidised financing.

EUBEC members referred to the "Lake Turkana Wind Power Project" as a recent example for a close collaboration between DFIs and ECAs and encouraged European international contractors to proactively approach the European development finance institutions with their project ideas at an early stage.

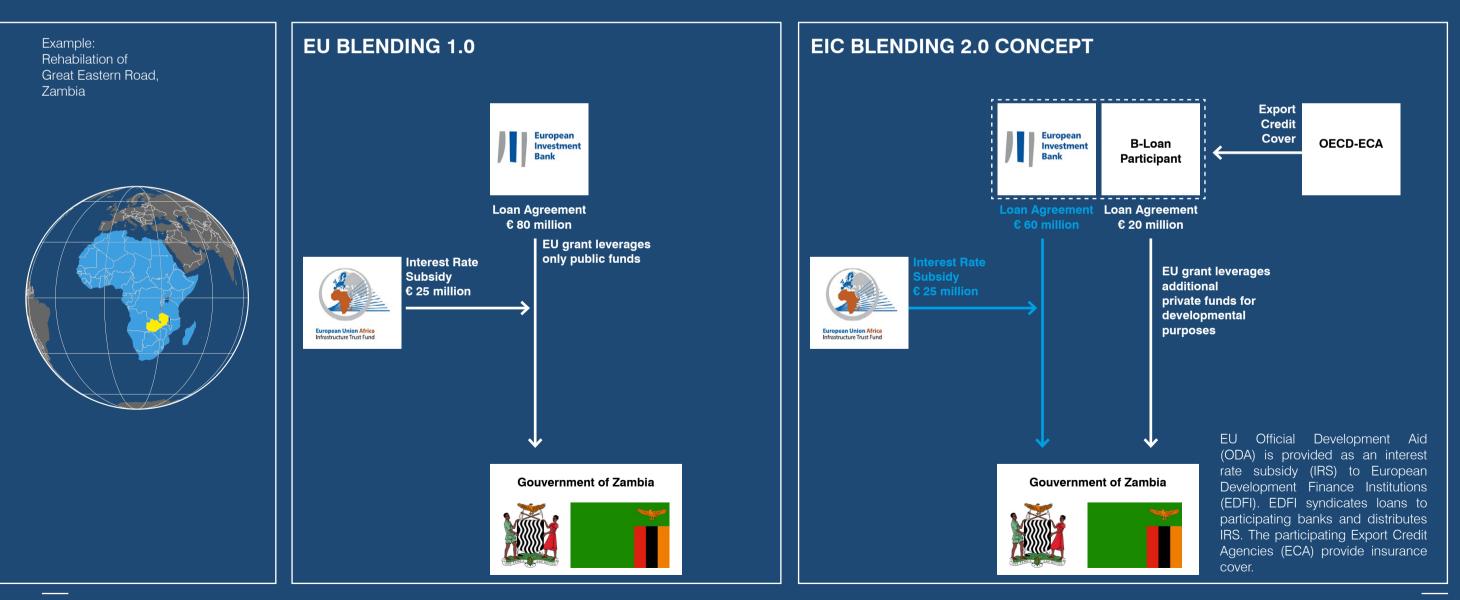


EIC has developed a concept to enable European Development Finance Institutions to syndicate concessional infrastructure loans amongst commercial banks to the extent that such tranches are guaranteed by insurance cover from export credit agencies. Blending 2.0 substantially leverages additional private funds for strategically important public sector infrastructure projects in Africa and other developing regions worldwide.

Robert Poelhekke, NABU Managing Director Member of the Working Group Africa

BLENDING 2.0

EIC's innovative "Blending 2.0" concept consists of EU grants to subsidise interest rates for concessional development loans arranged by Lead Financiers which are syndicated amongst commercial banks to the extent that commercial bank finance can be guaranteed by comprehensive insurance cover from participating Export Credit Agencies (ECA). Thus, "Blending 2.0" would catalyse additional private sector finance for typical so-called "commercially non-viable" public sector infrastructure projects that do not generate sufficient direct project income, but are critical for social and economic development of the country (e.g. transport, roads, bridges, railways, drinking water & sanitation, ports, regional airports, health and education).



The World Bank's new **Procurement Frame**work will influence procurement practices across the globe for the coming decades. EIC is an active stakeholder in this reform process and voices its views and concerns at all stages of the consultations. EIC insists that the World Bank ensures and overviews that a fair and balanced international standard form of contract is used for projects it finances. We will be an active stakeholder in the upcoming implementation phase.

Uwe Krenz

EIC World Bank Liaison Officer Chairman of the Working Group World Bank Procurement

WORLD BANK PROCUREMENT

POLICY CONTEXT

The World Bank Group committed almost US\$ 60 billion in loans, grants, equity investments, and guarantees to its members and to private businesses in 2015. Commitments from the International Bank for Reconstruction and Development (IBRD) to middle income countries totalled US\$ 23.5 billion, while IDA, the World Bank's fund for the poorest, made commitments of US\$ 19 billion. Since 2012 the World Bank is undergoing the first comprehensive review of its procurement system. As part of the process, the World Bank received input from over 5,000 stakeholders from more than 90 countries, representing governments, the private sector, academia, and civil society. In July 2015, the World Bank's Board of Executive Directors approved a new policy governing procurement in projects financed by the Bank which shall be implemented in 2016.

EIC POSITION

EIC participated actively in the various rounds of consultations and called upon the Bank to ensure that International Competitive Bidding (ICB) remains a mandatory procurement arrangement for high-value investments, with appropriate Bank oversight. For large and complex infrastructure projects, EIC advocated the maintenance of the Bank's "golden standard" of procurement documents and practices.

Regarding so-called "Alternative Procurement Arrangements", EIC expressed its concern that the new policy no longer calls for the "equivalence" of clients' arrangements with the Bank's own procurement procedures but that the required standard has been watered down to "acceptable" procurement practices. Irrespective of the procurement approach, EIC calls for the mandatory use of a fair and balanced international standard form of contract and highlighted the need to integrate sustainable procurement criteria in Bank-financed projects.



STATUS QUO

The World Bank's Board of Executive Directors approved the proposed New Procurement Policy in July 2015. In the view of the Bank, the new system will better respond to borrowers' needs and project realities because it provides more options to best achieve value for money and fit-for-purpose solutions as agreed with the Bank.

In March 2016. EIC co-hosted with the World Bank a Procurement Seminar in Berlin to familiarise European contractors, suppliers and consultants with the details of its New Procurement Policy Framework. When comparing the final policy package with the initial EIC Position, it can be concluded that the following EIC recommendations have been taken into consideration by the Bank: International Competitive Procurement (ICB) is expressly mentioned as the "preferred approach" for complex, high-risk and/or high-value activities, for which the Bank's Standard Procurement Documents will remain in place. The Bank's procurement resources will target in the future the most significant contracts for review and will closely monitor performance, time and out-turn cost.

The new framework introduces the possibility for the borrower to apply on a voluntary basis elements of Sustainable Procurement and to reject abnormally low tenders subsequent to a thorough validation procedure. Award decisions can be based in future on value-formoney criteria beyond the lowest evaluated bidder approach which means that the "Most Economically Advantageous Tender" can also be selected in the context of works contracts. Alternative Procurement Arrangements are admissible on a case-by-case basis only after a rigid evaluation process. The Bank further plans to enhance its complaint management, including contract-related correspondence.

The implementation of the procurement policies is scheduled to move forward in 2016. Once in place, the new World Bank Procurement Framework will become a benchmark for all Multilateral Development Banks. EIC will continue to monitor the implementation of the new system and will advertise towards the Bank's clients the more frequent use of the option for Sustainable Procurement.

Abnormally Low Tenders are a daily concern for European International Contractors in all regions of the world because they often lead to ultimately higher costs, a low quality of of works and in many cases a number of disputes. EIC welcomes that Multilateral **Development Banks** are addressing this unwelcome phenomenon in the new **Procurement Policies**

Wouter Remmelts BAM International **EIC Vice President**

ABNORMALLY LOW TENDERS

POLICY CONTEXT

Over the past years, the issue of Abnormally Low Tender (ALT) prices under works contracts has become a major concern for the Multilateral Development Banks (MDB) and their borrowers under public sector projects. Whereas in many of the MDBs' countries of operation, the national procurement procedures and legislation contain provisions that permit the rejection of ALTs under a range of conditions, currently, neither the MDB standard tender documentation nor their respective procurement policies and rules covering public sector transactions permit clients to reject ALTs under bank-financed contracts.

MDBs have come under increasing pressure from clients to permit the rejection of ALTs under procurement exercises which are subject to its procurement policies/rules. In an attempt to address this issue, the MDBs have agreed that a special MDB Working Group, co-ordinated by the European Bank for Reconstruction and Development (EBRD), be tasked with the identification of potential solutions to this issue.

EIC POSITION

EIC welcomes the MDB initiative to address the problem of abnormally low tenders bearing in mind that European international contractors are exposed to ALTs in all world regions where Multilateral Development Banks are providing finance to infrastructure projects. EIC therefore supports the approach that, if the lowest tender price transpires to be substantially below m the second price-ranked tender, the MDB procurement rules should oblige its borrowers to investigate such a low bid and reject it, in case it is proven to be an ALT.

Whereas EIC agrees with the MDB assumption that all tenders below a defined threshold need to be checked in regard to their ALT risk when 📾 to reject ALT subject to the observation of necessary they are considered for a contract award, we call 🧮 upon the MDBs to abandon the current option for Borrowers to increase the Performance Security = the respective procedure in the bidding documents in case of a suspected ALT, once a reliable and practical mechanism to deal with an ALT is in place.

STATUS QUO

Subsequent to the setting-up of the MDB Working Group, the EBRD invited EIC's feedback on possible practices to define and reject ALT. Due to the fact that there is currently no commonly accepted definition of what constitutes an ALT or a framework to detect such tenders in practice, EIC summarised its perspective in a Position Paper in February 2015 which was largely endorsed by CICA and, with minor qualifications, also by FIDIC.

In order to eliminate any subjective assessment with respect to ALT, the MDB Working Group later proposed an objective mathematical approach to identify tenders with a high risk of ALT. Based on the assumption that a normal distribution of tender prices, the so-called "standard deviation", can be derived from the fact that any price offer for a works contract is a function of the materials, machinery and labour used, as well as the overheads and profit, MDB and Borrowers expect that, with a given guality of the permanent works, the cost of materials have minimal divergence between the tenderers. This should be especially the case in re-measurement contracts where profit margins tend to vary little between different tenderers.

Whilst EIC gave its general consent to this approach, we believe that an arithmetic formula should only be used to establish a presumption to initiate a deeper investigation. In case that a prudent contracting authority has concerns that any bid is abnormally low, it should fully investigate whether that bid is sustainable. EIC strongly recommends that, in case of doubt, the contracting authority should request the bidder in question to submit a breakdown of the prices making up the tender.

The World Bank's New Procurement Framework meanwhile introduces for the first time the possibility safeguards. The new rules ask Borrowers, which determine to make use of such possibility, to disclose and to give a bidder having submitted a potential ALT the opportunity during bid evaluation to justify its ALT for the Borrower's analysis.

ETHICS AND CORPORATE RESPONSIBILITY

POLICY CONTEXT

Corporate Responsibility (CR) has become one of the standard business practices of our time. For more than a decade now a momentum of international convergence and coherence on what constitutes responsible business conduct has emerged from the launch of the UN Global Compact to the endorsement by the UN Human Rights Council of the Guiding Principles on Business and Human Rights and the latest update of the OECD Guidelines for Multinational Enterprises. This convergence is echoed in various international standards, including the ISO 26000 Guidance on Social Responsibility, the IFC Performance Standards, and the OECD Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence. Presently, the World Bank is in the process of updating and strengthening its environmental and social policies with ten new Environmental and Social Standards.

EIC POSITON

As a federation, EIC fully supports the efforts of International Organisations and Financing Institutions to agree on a robust set of environmental, ethical and social standards which would be instrumental in satisfying the expectations of all stakeholders in international construction projects and in creating a level playing field for all internationally active contractors.

EIC published together with FIEC as early as 2009 its own Statement on Corruption Prevention in the Construction Industry in which we strongly oppose corruption in its diverse forms as an unacceptable phenomenon in national and international business transactions. At the same time, we call on the public sector to complement the various private sector initiatives and individual company Codes of Conduct to fight corruption by closing loopholes that encourage unethical behaviour on the "demand side". Since 2011, EIC has officially endorsed the Construction Sector Transparency Initiative (CoST) which aims at increasing the transparency and accountability for publicly financed infrastructure worldwide.

STATUS QUO

EIC organised a Workshop on "Connecting Partners - Supply Chain Responsibility in International Construction Projects" in connection with its autumn 2015 conference in Rotterdam with the objective to identify strategies for European international contractors to respond to the challenges arising from CSR requirements. As a result of this Workshop, the EIC Board decided to launch a new Working Group on Corporate Responsibility in order to highlight the performance of European companies in applying CR standards in their international operations. Bearing in mind the Sustainable Procurement option incorporated in the World Bank's New Procurement Framework, the Working Group will also prepare technical advice to clients seeking to incorporate sustainable procurement criteria into their tenders.

Additionally, EIC is participating in the strategic review process of the Construction Sector Transparency Initiative (CoST) which explores how the CoST initiative can increase its impact to support communities worldwide. In April 2016, EIC joined a CoST mission to the European Investment Bank (EIB) to explain to EIB staff the contribution of CoST to good governance in developing infrastructure worldwide.

EIC has also embraced together with FIEC the initiative of the International Organization for Standardization (ISO) to launch a new standard for anti-bribery management systems.

The proposed new ISO 37001 Standard is designed to help companies and organisations implement an effective anti-bribery management system by specifying a series of measures in order to prevent, detect and address bribery and by providing guidance on how to implement these. EIC and FIEC participated as an observer in the drafting process which shall be concluded with the launch of the new ISO 37001 Standard in the course of 2016.

EIC strongly opposes corruption in its diverse forms as an unacceptable phenomenon in national and international business transactions because it distorts international competition, adversely affects the quality of the works and damages the image and reputation of the whole construction industry. EIC endorses holistic business models which encourage all stakeholders of the construction process to engage in sustainable practices.

NCC **EIC Board Member** Chairman of the FIEC/EIC Working Group Ethics

Per Nielsen



EIC PUBLICATIONS

All publications can be obtained from the EIC Secretariat.

- EIC Contractor's Guide to the MDB Harmonised Construction Contract (April 2011)
- EIC Contractor's Guide to the FIDIC "Gold Book" (Published: May 2009)

EIC Memorandum on "Frequently Asked Questions on Public-Private Partnerships" (September 2006)

EIC Blue Book on Sustainable Procurement (November 2004)

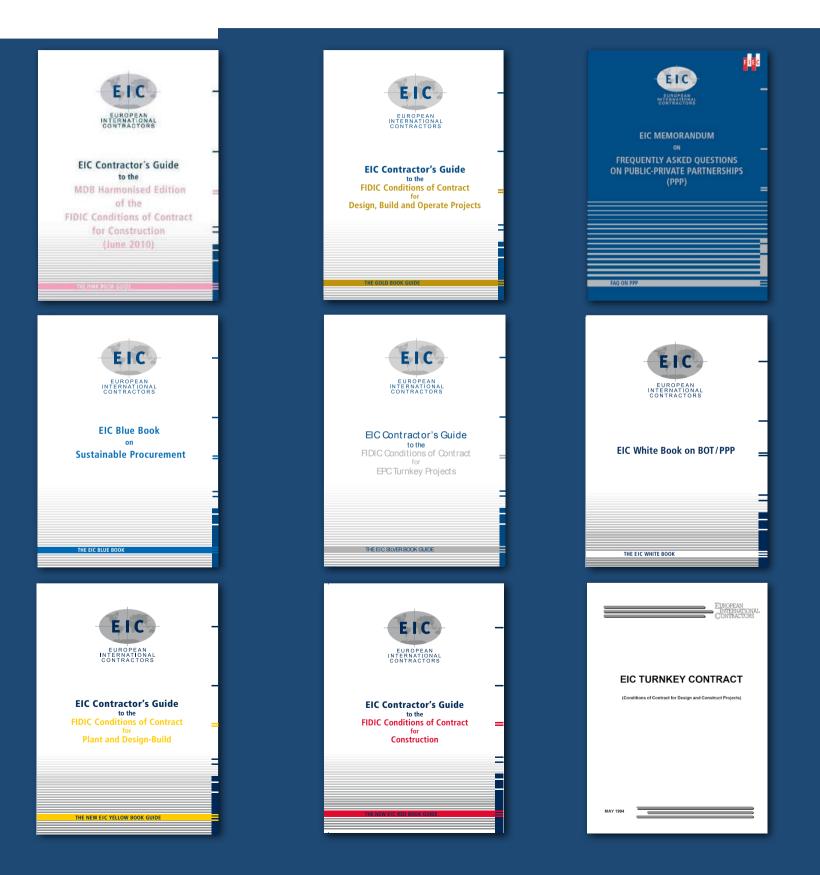
EIC Contractor's Guide to the FIDIC "Silver Book", second edition (August 2003)

EIC White Book on BOT / PPP (April 2003)

EIC Contractor's Guide to the FIDIC "New Yellow Book" (March 2003)

EIC Contracor's Guide to the FIDIC "New Red Book" (March 2002, reprinted March 2003 with editorial amendments)

EIC Turnkey Contract (1994)



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EIC SECRETARIAT



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